

DOCKET NO.: NNH-CV-17-6072389-S

SUPERIOR COURT

ELIYAHU MIRLIS

J. D. OF NEW HAVEN

v.

AT NEW HAVEN

YESHIVA OF NEW HAVEN, INC.
FKA THE GAN, INC. FKA THE GAN
SCHOOL, TIKVAH HIGH SCHOOL AND
YESHIVA OF NEW HAVEN, INC.

SEPTEMBER 16, 2020

**MEMORANDUM OF DECISION ON
PLAINTIFF'S MOTION TO TERMINATE STAY**

This matter before the court is the Plaintiff's Motion to Terminate Stay in this judgment lien foreclosure action. The action arises from a judgment that entered in the separate Federal Court civil action captioned *Eliyahu Mirlis v. Daniel Greer et al.*, No. 3:16-cv-00678 (MPS), affirmed on appeal *Mirlis v Greer*, 17-40230cv, Doc. No. 158-1 (2d Cir. Mar. 3, 2020). The civil action was directed against the Defendant, Daniel Greer, and the Defendant in this foreclosure action, Yeshiva of New Haven, Inc. fka The Gan, Inc. fka The Gan School, Tikvah High School and Yeshiva of New Haven, Inc. (hereinafter "Yeshiva" or "Defendant"). That underlying action involved claims of sexual abuse of a minor by the Defendant, Daniel Greer, an attorney and rabbi and the president and member of the board of the Defendant entity Yeshiva. On June 6, 2017, the United States District Court for the District of Connecticut entered a judgment in the underlying action in favor of Plaintiff against Defendant and Greer in the amount of \$21,749,041.10 plus post judgment interest. The judgment was affirmed on appeal. *Id.* The Judgment remains substantially unsatisfied, Plaintiff having been able to collect only \$277,124.51 on account of the Judgment from Defendant and Greer.

BACKGROUND AND PROCEDURAL HISTORY

In this action, Plaintiff seeks to foreclose the judgment lien encumbering the subject property in order to collect some of the funds owed to him on the Judgment in the civil action.

On November 8, 2017, Plaintiff filed his Motion for Summary Judgment as to liability and supporting memorandum (Doc. Nos. 104, 105). The Defendant did not object. The motion was granted by the court, Spader, J., on January 16, 2018. (Doc. No. 104.10).

The Defendant filed a Motion for Discharge of Judgment Lien on Substitution of Bond (Doc. No. 106) on January 16, 2018, seeking to have the Court substitute a cash bond for the Property "in the amount of the fair market value of the Property." (Doc. No. 106). Thereafter, on June 5, 2019, Plaintiff filed his Motion for Judgment of Strict Foreclosure (Doc. No. 113) and Appraisal Report. (Doc. No. 114).

In response, Defendant filed an Objection to Motion for Judgment of Strict Foreclosure, Motion to Discharge Judgment Lien and Substitute Bond, and Motion to Continue Hearing on Motion for Judgment of Strict Foreclosure (Doc. No. 115). The Plaintiff requested an evidentiary hearing to address the valuation dispute. Thereafter, in accordance with the July 22, 2019 court order of simultaneous disclosure of experts (Doc. No. 120.10), on August 2, 2019, the parties' each disclosed their experts. (Defendant's #123, Plaintiff's #124). After two motions for continuance filed by the Defendant, which were granted over objection, this valuation hearing proceeded before the Court on October 28, 2019, and December 9, 2019.

At the hearing, both parties were represented by counsel and had and the opportunity to present their cases. Each party called one witness, their respective

appraisers, and submitted one exhibit each, the reports of their respective appraisers. The parties simultaneously submitted post trial briefs on January 27, 2020 (Defendant's post trial brief Doc. No. 131, Plaintiff's post trial brief Doc. No. 132). The record was closed upon the filing of these post-trial briefs. The court issued its Memorandum of Decision dated February 24, 2020, discussing the evidence presented and reaching its determination of value. The court found that the value of the property, taking into account the evidence presented, is \$620,000. See Memorandum of Decision (Doc. No. 133). The court also granted the Defendant's request for substitution of a bond and held that the Defendant could discharge the Judgment Lien by depositing a cash only bond with the court in that amount. See *id.* The Defendant has appealed the court's decision.

On July 23, 2020, The Plaintiff has filed its Motion to Terminate Stay pursuant to the provisions of Practice Book § 61-11 and Conn. Gen. Stat. 47a-35. (Doc. No. 142). The Plaintiff has filed an objection thereto on August 3, 2020. (Doc. No. 141). On September 11, 2020, the court held a duly noticed hearing on the Plaintiff's motion and the Defendant's objection thereto, in accordance with Connecticut Practice Book § 61-11 (e).

APPLICABLE LAW

In accordance with C.P.B. § 61 -11, the court may terminate the automatic stay which arises upon appeal if the court finds that (1) the appeal was filed only for the purposes of delay, or (2) due administration of justice requires it. See *Connecticut National Bank v. Zuckerman*, 31 Conn. App. 440, 624 A.2d 1163 (1993). *Connecticut General Statute § 47a-35* also provides that the automatic stay may only be terminated if "it appears to the judge who tried the case that the appeal was taken *solely* for the

purpose of delay or unless the Defendant fails to give bond, as provided in section 47a-35a." (Emphasis added).

In making its determination, the court is to consider relevant factors, including:

(1) The likelihood that the appellant will prevail in the appeal; (2) Any irreparable injury that may arise from executing the judgment; (3) The effect of the stay upon other parties; and (4) The public interest involved. *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451, 458-60, 493 A.2d 229 (1985).

DISCUSSION

In addressing the argument of the first factor, the likelihood that the appellant will prevail in the appeal, Plaintiff sets forth the history of the unsuccessful collection efforts and argues that the Defendant and Greer have engaged in repeated delay tactics to frustrate the Plaintiff's efforts to collect on the judgment rendered against the Defendant, (Plaintiff's Motion to Terminate Stay Doc. No.142, page 3.), although reciting largely the actions of Greer. The Plaintiff also refers to the Federal Court's findings of fraudulent transfer by Greer and the order of Judge Shea in a subsequent action commenced against a number of nonprofit entities alleged to be controlled by Greer in denying Greer's motion for protective order to preclude further post-judgment discovery. In that order, Judge Shea comments that Greer's arguments "border on frivolous." See Plaintiff's Motion to Terminate Stay (Doc. No. 142, pp. 4-5). The Plaintiff sets forth the history of collection efforts and actions by Greer in response. The Plaintiff's point is well taken. However, while Greer's actions as reported are questionable, it is the Defendant, Yeshiva, which is the appellant in this matter – not Greer. Also, while Greer may be a principal of the Defendant in this action, the arguments advanced, while again well

taken, do not alone support a finding sufficient to support the termination of the stay in this matter.

As it relates to this action, the Plaintiff cites his claims of relevant history of delay in his brief at pages 5-6, including in part the procedural history set forth above. Plaintiff further cites to the issue raised with the court during the course of the proceedings based on his claim that the Defendant refused to allow the Plaintiff's appraiser access to the property as addressed in the Motion for Access to Premises to conduct the appraisal. (Doc. No. 108). That motion was granted by the court, Cordani, J., by order dated April 8, 2019. (Doc. No. 108.10). While these issues are accurately stated, again, they do not necessarily implicate the claim that the appeal is solely for the purpose of delay.

The Plaintiff correctly notes the standard of review. The standard of review is high.

The standard of review of a judgment of foreclosure by sale or by strict foreclosure is whether the court abused its discretion....In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action.... Our review of a trial court's exercise of the legal discretion vested in it is limited to questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did.... We will disturb the trial court's determination of valuation, therefore, only when it appears on the record before us that the court misapplied or overlooked or gave wrong or improper effect to any test or consideration which it was [its] duty to regard"

Webster Tr. v. Mardie Lane Homes, LLC., 93 Conn. App. 401, 405-07 (2006) (citations omitted).

The Defendant raised three issues on appeal. Specifically,

1. Whether the trial court erred by finding the value of the property known

as 765 Elm Street, New Haven, Connecticut (the "Property"), to be \$620,000.00, as opposed to \$390,000.00 as proposed by [Yeshiva].

2. Whether the trial court erred by crediting the testimony of Patrick Craffey, even though he failed to consider (a) comparable properties and environmental distress to the property.

3. Whether the trial court erred by entering a judgment of strict foreclosure.

The Defendant takes issue with the court not accepting in full its evidence through its appraiser, an issue which the Plaintiff correctly notes is an issue of credibility. "The acceptance or rejection of the opinions of expert witnesses is a matter particularly within the province of the trier of fact and its determination will be accorded great deference by [the Connecticut Supreme] Court.... The credibility and weight of expert testimony is judged by the same standard [as that used to evaluate lay witness testimony], and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible..." *Lapointe v. Comm'r of Corr.*, 316 Conn 225, 383 (2015).

As to the issue raised of claimed error in entering a judgment of strict foreclosure, that issue is questionable. The Defendant submitted evidence that its valuation is \$960,000.00. Even assuming arguendo that the valuation were accepted, there is no dispute that the judgment lien upon which this foreclosure action is based is for a judgment that is, even without post judgment interest taken into account, in excess of \$21,000,000.00. Indeed, the Defendant acknowledges in his brief "[t]he parties agree that the value of the Property is far less than the Judgment...." Objection to Motion to Terminate, (Doc. No. 142, Page 2). The acceptance of the Defendant's valuation would not change the judgment from a judgment of strict foreclosure.

The Plaintiff argues that the trial court's decision complied with the law and that the Defendant will be unable to overcome the standard of review. The court agrees with the Plaintiff's argument that the likelihood of success on appeal is not high.¹ Despite this, this court cannot conclude that the stay should be terminated. Although the standard of review is high and presents an obstacle to the defendant, it does not necessarily mean that the appeal is taken solely for purposes of delay. It is not this court that makes the appellate determination. This court cannot predict the outcome of the appeal.

Further, in considering the question of irreparable harm, and weighing all factors, the court cannot conclude that the Plaintiff will be irreparably harmed by the continuation of the stay. While there is no question that the Plaintiff is justifiably frustrated in the protracted efforts to enforce the judgment against this Defendant and Greer, and while additional delay understandably adds to that frustration, the stay will come to an end at the end of the appeal. If the stay is terminated, however, the strict foreclosure would proceed (once permitted after COVID related extensions of deadlines have passed) and the termination of the stay may ultimately result in rendering the appeal moot. It is true that the Defendant's motion to substitute a bond was granted and that option open to it. That said, with the defendant having not done so, the parties

¹ The Defendant argues in its brief that the court valuation was the "mid-way point between the valuation proposed by each party," and "averaging of the two appraisals" and a "split the baby" valuation; Objection to Motion to Terminate Stay, (Doc. No. 141, page 6); and argued the same at oral argument, maintaining that the court split the number in half. It should be noted that the valuation determined by the court is not the midway number between the parties' valuations. (The Plaintiffs' valuation was \$960,000. The Defendant's valuation was \$390,000. The "average" of those two valuations is \$675,000.00)

overall appear to be most equitably served by maintaining the status quo pending appeal.

This discussion relating to the question of irreparable harm similarly relates to the third factor of the effect of the termination of the stay upon the parties. While on the one hand, if the stay remains in place, the Plaintiff will need to wait further to pursue the foreclosure action, on the other, the termination could essentially moot the appeal.

Considering the fourth factor, while the court can appreciate the Plaintiff's argument, the court cannot find that public policy issues are implicated in this matter.

Accordingly, while the court sympathizes with the Plaintiff, and agrees with the argument advanced by the Plaintiff as it relates to the merits of the appeal, the court cannot find that the appeal was filed solely for purposes of delay. In weighing the factors of this case, the record, the evidence, and the totality of the circumstances, the Court is cannot find that, under *Connecticut Practice Book* §61-11(d), *Connecticut General Statute* §47a-35 and/or the *Griffin Hospital* test, the stay pending appeal should be terminated.

CONCLUSION

Accordingly, the Plaintiff's motion to terminate stay is DENIED. The Defendant's Objection is SUSTAINED.

BY THE COURT



CLAUDIA A. BAIO, JUDGE